

## G-Cloud 14 – KPMG Supplier Terms: Data and Analytics

### 1 Scope and definitions

- 1.1 KPMG LLP has been appointed to the Crown Commercial Service G-Cloud 14 Framework Agreement reference RM1557.14 (the “**Framework**”) which sets out the terms applicable to Call-Off Contracts entered into between a Supplier and a Buyer under that Framework (the “**Call-Off Terms**”).
- 1.2 Unless otherwise provided in these Supplier Terms:
- (i) capitalised words have the meaning given to them in the Framework and Call-Off Terms;
  - (ii) the term “you” and its derivatives refer to the Buyer and the terms “we” and “our” and its derivatives refer to the Supplier, each as identified in the Order Form;
  - (iii) references to clause numbers are to clauses in the Call-Off Terms and references to paragraphs are references to paragraphs in these Supplier Terms;
  - (iv) references to the Order Form are references to the relevant Order Form entered into between the Buyer and Supplier; and
  - (v) the term “the Services” means the Services (including any Additional Services) set out in the applicable Order Form and any other obligations performed by us under the Call-Off Contract.
- 1.3 These Supplier Terms explain how, together with the Call-Off Terms, we will work with you under a Call-Off Contract and set out the supplemental terms that will apply in relation to the Services provided in addition to the Call-Off Terms.
- 1.4 At your request we may agree with you to specifically vary these Supplier Terms for a specific Call-Off Contract, provided such amendment does not materially change the overall effect of these Supplier Terms, and we will set out any agreed amendment in the Order Form.

### 2 Providing the Services

- 2.1 Notwithstanding our duties and obligations, our role is to provide the Services rather than to make business decisions on your behalf, and you will always remain responsible and accountable for managing your affairs, deciding on what to do after receiving our Services, and implementing any advice or recommendations we provide.
- 2.2 In relation to any due diligence we may have conducted in accordance with clause 5, you warrant that any information you provided us, and any responses to our enquiries, was accurate and complete in all material respects. If you become aware of any inaccuracies or omissions you will promptly notify us in writing.

### 3 The way we work

- 3.1 In providing the Services we may provide advice orally, in draft or interim form, but our later written advice or final written report supersedes anything provided earlier and you should not rely on any advice that is draft or interim. If we give you oral advice, and you want to rely on it, let us know and we will provide it in writing. Only the written advice provided in response to such a request should be relied upon.

- 3.2 We cannot predict future events or circumstances, and you should not interpret any advice, opinion, statement of expectation, forecast or recommendation given by us as being a prediction or guarantee of any outcome.
- 3.3 Unless specifically forming part of the Services, or otherwise specifically agreed with you in writing:
- (i) if we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification; and
  - (ii) we will not update the Services or any Deliverables after we have delivered the final Deliverables.
- 3.4 The Services and any Deliverables are provided for your internal use only (and not for the benefit of any third party) and, except as specifically provided under the Call-Off Terms, they may not be disclosed to any other party without our prior written consent (except as required by Law or by a competent Regulatory Body in which case you shall, if permitted by Law or the Regulatory Body, promptly inform us). However, you may disclose the Deliverables to other government bodies or agencies for support purposes and to your insurers, legal and other professional advisers if seeking advice in relation to the Services, provided that you inform them that: (i) the Deliverables are to be held in confidence; and (ii) to the fullest extent permitted by law, we accept no liability to them in connection with the Services or the Deliverables.

#### **4 Subcontracting**

- 4.1 In addition to any Subcontractors expressly identified in the Order Form, we may also use any of the third party subcontractors specifically set out in our Service Description or our Application. We may also rely on the services of other KPMG Persons (defined below) in providing the Services, to which you hereby consent.
- 4.2 In these Supplier Terms “**KPMG Persons**” means KPMG LLP and each and all of its members, employees, and other workers, together with any entity associated with us and each and all of its partners, members, directors, employees and other workers, and “**KPMG Person**” means any one of them.

#### **5 Buyer's responsibilities**

- 5.1 You shall provide (and procure that your personnel and any of your other suppliers provide), in a timely manner, such cooperation, information, documents and access to personnel, premises, systems and facilities, as set out in the Order Form or as we reasonably need to provide the Services or we request in order to obtain all necessary licences and permissions. We shall endeavour to set out such requirements in the Order Form, but you acknowledge that such details may not be exhaustive.
- 5.2 In order to enable us to provide the Services, you shall inform us of any changed circumstances or information that may have an impact on our Services and ensure that the personnel with whom we deal have the required skills and information. You shall enter into any notifications, registrations and disclosures required of you by Law.
- 5.3 We may rely on any instructions, requests or information supplied, orally or in writing, by any person whom we reasonably believe to be authorised by you to communicate with us for the purposes of the Call-Off Contract. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility.
- 5.4 You shall not, directly or indirectly, solicit the employment of any Supplier Staff involved in performing the Services, during performance or for a period of 3 months following their completion or following termination of the Call-Off Contract, without our prior written consent. This prohibition shall not

prevent you at any time from running recruitment advertising campaigns nor from offering employment to any Supplier Staff who may respond to any such campaign.

- 5.5 In these Supplier Terms "**Beneficiaries**" means any person identified in the Order Form or Call-Off Terms as a beneficiary of the Services or of any Deliverable other than you, and on whose behalf or for whose benefit you enter into the Call-Off Contract or in respect of whom we subsequently agree, at your request, to accept responsibility or liability towards in respect of the Deliverables or the Services (and Beneficiary shall be interpreted accordingly). You agree to the provisions of the Call-Off Contract on your own behalf and as agent for any other Beneficiaries.
- 5.6 If you fail to comply with your responsibilities or fail to meet any of your dependencies under the Call-Off Contract, this may have an impact on our delivery of the Service (such as on timescales, our ability to comply with the terms of the Call-Off Contract, or to increase our costs) and we shall be relieved from our obligations or any delivery timetable/date to the extent impacted by your failure. We may also recover from you any additional costs we incur as a direct result of your failure, provided we use reasonable endeavours to mitigate the impact of any failure to the extent we are reasonably able to.

## 6 Buyer policies

- 6.1 We appreciate that you may have your own internal policies and procedures applicable to the Services ("**Buyer Policies**") with which you would like us to follow in providing the Services (which may include staff vetting, security and environmental requirements). However, in order to enable us to ensure we can comply with any Buyer Policies in providing the Services (and for the Charges), we require written copies of them in advance of entering into the Call-Off Contract (other than the specific policies listed in the Call-Off Terms).
- 6.2 If you ask us to comply with any additional or amended Buyer Policies after the date of the Call-Off Contract we will use our reasonable endeavours to comply with them in all material respects, however we will discuss with you if we are unable to comply with any additional or amended Buyer Policies in providing the Services or if we are unable to do so for the Charges.

## 7 Confidentiality

- 7.1 We are a regulated business and comply with the confidentiality standards of the Institute of Chartered Accountants in England and Wales and will comply with the specific confidentiality obligations set out in the Call-Off Terms. Notwithstanding this, we may share information relating to you, our relationship with you, and the Services (including Confidential Information) with other KPMG Persons, and that information may be accessed by other parties who facilitate or support our business, but we will ensure that such parties are bound by confidentiality obligations protecting your Confidential Information and we are still responsible for ensuring such confidentiality if Confidential Information is shared with or accessed by such parties.
- 7.2 You must take all necessary precautions to ensure that any of our Confidential Information is only disclosed to such of your personnel to the extent that it is strictly necessary for them to know the Confidential Information and you must ensure that they comply with the confidentiality obligations under the Call-Off Contract.
- 7.3 You will immediately tell us about any security breach of our Confidential Information and will keep a record of those breaches. You will take the necessary steps to recover this information. You will co-operate with us in any investigation into the breach that we consider is necessary.
- 7.4 If you request (or the Call-Off Terms require) that we destroy or procure the return of your Confidential Information or any data we will take commercially reasonable steps to delete the same from our computer and communications systems and devices. However, we may retain a copy of such

Confidential Information or data as required by Law or our record retention policy (which we have implemented to enable us to comply with Law and the requirements of our Regulatory Body).

- 7.5 To reciprocate the obligation in clause 16.2, you will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors.
- 7.6 To clarify, we accept our obligation under clause 16.3 only in relation to Malicious Software introduced by us or our Subcontractors (or our Subcontractors' systems). To reciprocate clause 16.3, if Malicious Software is introduced by you or your third parties (or your or their systems) into our systems you will help us to mitigate any losses and will, as requested, help us to restore our systems as soon as possible.
- 7.7 To reciprocate the obligation in clause 16.5, you will immediately notify us of any breach of security of our Confidential Information and you will, where the breach occurred because of your default, recover our Confidential Information however it may be recorded.
- 7.8 You and us agree that the other may make any notifications, registrations and disclosures required by Law or considered advisable to comply with Law and this may include disclosures or registrations relating to money laundering, tax requirements, and criminal or regulatory investigations.
- 7.9 We may use information we obtain in performing the Services on an anonymised and/or aggregated basis so that no Personal Data or Confidential Information is disclosed, for benchmarking, analytics, quality assurance or other purposes related to our business.

## **8 Conflicts of Interest**

- 8.1 We may be delivering services to, or be approached to deliver services to, another party or parties with interests which conflict with yours (a **"Conflicting Party"**). We therefore have policies and procedures in place (as required by our Regulatory Body) to identify and manage potential conflicts between the interests of our clients. Where there is a risk of a conflict we may establish **"Barriers"** as safeguards designed to facilitate the protection of each client's interests, which may include (for example) separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems.
- 8.2 You accept that Supplier Staff are free to deliver services to Conflicting Parties, but where the interests of any Conflicting Party directly conflict with yours in relation to the subject matter of the Services (or under Framework clause 24.3) then the Supplier Staff shall not deliver services to the Conflicting Party and only other KPMG Persons may deliver services to the Conflicting Party where appropriate Barriers are in place. Where this process is followed and such Barriers are in place you agree that this will be sufficient in accordance with incorporated Framework clause 24 to manage such conflict of interest.
- 8.3 The Supplier Staff who are engaged in the provision of the Services to you shall not be expected or assumed to have knowledge of any information known to other KPMG Persons not engaged on the Services.

## **9 Intellectual Property Rights**

- 9.1 Subject to the payment of our Charges, we grant you the rights:
  - (i) to use our Intellectual Property Rights as set out in clause 11; and

- (ii) to use during the Term (on a non-exclusive non-transferable basis), any of our other Intellectual Property Rights which we provide or make available to you in providing the Services, solely to the extent you need to use the same to receive the benefit of the Services during the Term.

The licences granted in clause 11 and paragraph 9.1(ii) shall be revoked if our Charges are not paid in accordance with the Call-Off Terms.

- 9.2 For the purpose of the Call-Off Contract, our Background IPRs include any IPRs licensed to us before the date of the Call-Off Contract and any IPRs that are a development of or an enhancement and/or modification to any IPRs owned by or licensed to us before the date of the Call-Off Contract (howsoever arising, including as a consequence of the Services), and the definition of Background IPRs shall be interpreted accordingly. You will get a licence to use all such Background IPRs in accordance with clause 11.4.
- 9.3 Under clauses 15 (and subject to paragraph 9.5 below) the right to publish IPR as open source shall only apply:
- (i) to Project Specific IPR (excluding any software, which is subject to clause 15 and paragraph 9.6 below) for your ordinary business purposes;
  - (ii) if you give us prior written notice of your intention to publish the Project Specific IPR as open source and we agree (in writing) to the open source licence terms you intend to use; and
  - (iii) you notify us in writing of any third party with whom you intend to share the Project Specific IPR so that we are aware, as part of our obligations as a regulated entity, of who has access to the Project Specific IPR and we consent to their use of the Project Specific IPR (which we may withhold if such sharing would prejudice our ability to comply with applicable auditor independence requirements or applicable Law).
- 9.4 In accordance with clause 11.4, if we wish to include any third party's IPRs (excluding any IPRs of a KPMG Person) as part of the Services, then we shall identify such third party IPRs and the third party's licence terms which would apply to your use of such third party's IPRs (either as direct licensee or a sub-licensee) prior to the inclusion of that third party's IPRs in relation to the Services, and you agree to comply with (and will procure that any third party who you permit (as allowed under the Call-Off Contract) to access such third party's IPRs complies with) the third party licence terms in respect of the relevant third party's IPRs.
- 9.5 We hereby inform you in accordance with clause 15.1 that you cannot, unless specifically set out in the Order Form, publish any third party IPRs or our Background IPRs as open source (however you will still have the other rights to use them in accordance with clause 11), and you hereby confirm such is acceptable to you in accordance with clause 15.1.
- 9.6 In accordance with clause 15.1, we hereby confirm that your right under clause 15 to publish as open source any software created for you shall not apply. You hereby agree that this is acceptable to you.
- 9.7 Although you may use and exploit the Project Specific IPRs (and any of our Background IPRs and third party IPRs) in accordance with the terms of the Call-Off Terms and these Supplier Terms, we will have prepared the Project Specific IPR with the intent that they are used and relied upon by you and only for the purposes of the Services or as otherwise stated in the Order Form or our Service Description. Accordingly, we do not accept a duty of care to others who may see or use any Project Specific IPRs outside of the scope of this Call-Off Contract and our Services to you (and you shall not inform or infer to any third party that we do).

- 9.8 No use may be made of our name, logo or trade-marks without our prior written consent (including any consent which may be stated in the Order Form).
- 9.9 You hereby grant us, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, non-sublicensable (other than in accordance with this paragraph 9.9), licence to use your IPRs (or those licensed to you and made available by you to us to provide the Services) solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as you may notify to us in writing from time to time. We may sub-license our rights to use your IPR to our Subcontractors solely to the extent necessary and for as long as is necessary in order for such Subcontractors to provide their services to us in connection with the Services.

## **10 IPR Indemnity**

- 10.1 We shall indemnify you against any claim of infringement or alleged infringement of a third Party's IPRs in accordance with clause 11.6 (subject to clauses 11.7, 11.8 and 24) provided you comply with paragraph 10.2 below.
- 10.2 If a claim arises or is threatened against you, or you have reason to suspect that a claim may arise or be threatened, for which we indemnify you under clause 11.6: (i) you shall notify us promptly in writing; (ii) we may assume conduct of the claim; (iii) you shall not compromise or settle the claim without our prior written consent; and (iv) you shall provide us with such information and assistance, at our cost, as we reasonably require.
- 10.3 To reciprocate the indemnity we give to you under clause 11.6, you will, on written demand, fully indemnify us for all Losses which we or our Subcontractors may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of:
- (i) the rights you have granted to us under the Call-Off Contract;
  - (ii) your use of the Services or any Deliverables or our IPRs in breach of the Call-Off Contract; or
  - (iii) our use, in accordance with the terms of the Call-Off Contract, of any materials, information or data you have provided us.
- 10.4 If a claim arises or is threatened against us, or we have reason to suspect that a claim may arise or be threatened, for which you indemnify us under paragraph 10.3: (i) we shall notify you promptly in writing; (ii) you may assume conduct of the claim; (iii) we shall not compromise or settle the claim without your prior written consent; and (iv) we shall provide you with such information and assistance, at your cost, as you reasonably require.
- 10.5 In addition to the circumstances set out in clause 11.8, the indemnity in clause 11.6 and paragraph 10.3 above shall also not apply to the extent that:
- (i) the claim arises due to compliance by the party giving the indemnity with a documented specification or instructions provided by the other party;
  - (ii) the party being indemnified has caused or contributed to the events which gave rise to the claim under the indemnity by acting in breach of the licences or other terms of the Call-Off Contract;
  - (iii) the claim results from or is in connection with any alteration or modification of the infringing items by the party being indemnified; or

- (iv) the claim results from the combination, operation or use of any infringing items with any data, equipment, product, system or intellectual property not supplied by or made known to the indemnifying party.

## **11 Protection of Personal Data**

- 11.1 We will comply with the obligations in clause 12, however you will be responsible for ensuring that you (and the relevant data controller) comply with your (or the relevant data controller's) obligations under the Data Protection Legislation, including in relation to you instructing us to Process any Personal Data as part of the Services.
- 11.2 Unless specifically stated to be part of the Services, we are not responsible for where any data is hosted or transferred under your hosted environment or cloud service (which you should specify with your hosting or cloud service provider), or where you direct us to transfer or disclose data to a third party (such as one of your other third party suppliers or a separate government body).
- 11.3 You and us shall answer the other's reasonable enquiries to enable them, in respect of their obligations under clause 12 and this paragraph 11, to monitor the other's compliance and to fulfil their respective obligations under the Call-Off Terms.
- 11.4 You acknowledge we outsource some of our information systems support to other KPMG Persons and to reputable international providers (our "**Infrastructure Providers**"). We do this in accordance with our rigorous controls and requirements, and we have agreements with them as required by Data Protection Legislation (including data export agreements, because some of our systems may be managed at times from outside the European Economic Area).
- 11.5 In accordance with clause 12.3, you hereby consent to the Processing of Buyer Personal Data by our Subcontractors for the provision of the Services, and by our Infrastructure Providers, provided we ensure that they comply with the Data Protection Legislation and we remain liable to you for compliance with the Call-Off Terms and we oblige them to take equivalent measures when Processing Personal Data to those you require from us under the Call-Off Terms. We can provide further details on our arrangements with such Subcontractors and Infrastructure Providers in relation to any Processing activities that they provide as part of the Services to you.
- 11.6 To reciprocate the indemnity we give to you under clause 10.1, you will during and after the Term keep us fully indemnified against all Losses arising from any breach of your obligations under the Data Protection Legislation or under incorporated Framework clause 34, or under this paragraph 11.

## **12 Employment Regulations (TUPE)**

- 12.1 If you have reason to believe that the Employment Regulations will apply on the commencement of the Services or the entry into the Call-Off Contract you shall inform us in writing in advance of us entering into the Call-Off Contract so that both Parties can consider the implication of the Employment Regulations before entering into the Call-Off Contract and, if they choose to enter into the Call-Off Contract, so they can comply with their obligations under the Employment Regulations.
- 12.2 If you do not notify us in accordance with paragraph 12.1, you warrant and represent that the commencement of the Services and the entry into the Call-Off Contract shall not cause a Relevant Transfer in respect of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier).
- 12.3 You agree to indemnify us for any Losses or additional costs or expenses (including unforeseen employment costs (including redundancy costs)) arising from:



- (i) if you fail to notify us under paragraph 12.1 and you are in breach of the warranty under paragraph 12.2, the Employment Regulations applying to transfer the employment of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier) to us or our Subcontractors;
- (ii) your failure (or the failure of any third party associated with or engaged by you, including any Former Supplier) to comply with your or its obligations under the Employment Obligations and (if applicable) the New Fair Deal; and
- (iii) any claim by any employee or person (or their employment representative) which arises or is alleged to arise from any act or omission by you (or any third party associated with or engaged by you, including any Former Supplier) on or before the date of the Relevant Transfer.

12.4 Clauses 29.7 and 29.8 shall apply also in respect of the provisions of this paragraph 12.

### **13 Our compliance with law and regulation**

- 13.1 The Law and our Regulatory Bodies require us to comply with professional standards, including but not limited to standards requiring independence from our audit clients, ethical behaviour, objectivity, impartiality, strict rules of client confidentiality and 'know your client' checks. Accordingly, we may terminate the Call-Off Contract immediately if: (i) there is a change of Law, rule, regulation or professional standard, or circumstances arise that would cause the relationship between you and us to violate such Law, rule, regulation or professional standard or would prejudice any KPMG Person's ability to comply with applicable auditor independence requirements; or (ii) we believe a conflict of interest cannot be managed but in such a case we shall consult you before we do so. Should such a circumstance arise, we will discuss with you how the Services might be varied so that they can be continued or, if appropriate, arrangements by which our Call-Off Contract can be terminated and handed over to a successor service provider chosen by you.
- 13.2 In relation to the performance of our obligations under the Call-Off Contract, the defined terms "Regulatory Body" and "Regulatory Bodies" shall include any organisation or body that has regulatory or professional oversight over our business.
- 13.3 If we are required by any court or Regulatory Body in any proceedings or forum in which we are not a party or participant but you are, or if we are required by a parliamentary select committee or body, to provide information or to produce documents relating in any way to the Services, you shall pay our costs incurred in preparing for and responding to any such requirement at our standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

### **14 Liability**

- 14.1 Where the Call-Off Contract and/or Services are for the benefit of you and one or more Beneficiary, the limitations on our liability under clause 24.1 (including incorporated Framework clauses 4.1 – 4.6) shall be in the aggregate and will be apportioned amongst you and the Beneficiaries. Neither you nor a Beneficiary shall dispute or challenge the validity or operation of this paragraph on the grounds that no apportionment has been agreed or that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low.
- 14.2 In order to clarify the intention under incorporated Framework clause 4.4, you agree that (subject to the agreed caps on liability) we shall, to the extent the same can be recovered under Law, only be responsible for regulatory losses or fines arising directly from our breach of any Laws as they apply to us.



- 14.3 You shall not (and you shall procure that no Beneficiary shall) bring any claim against any KPMG Person except the contracting entity to the Call-Off Contract in respect of loss or damage suffered by you arising out of or in connection with the Call-Off Contract or the Services. This paragraph is enforceable by any KPMG Person. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party for the acts or omissions of anyone involved in delivering the Services.
- 14.4 If other persons are liable to you for any Losses for which we are also liable, then our liability to you is limited to the sum we ought reasonably to pay having regard to our responsibility for those Losses, on the basis that we will not be liable for Losses that may be attributable to the other persons (whether or not they have limited or excluded their liability). Those other persons will be deemed to have paid to you sums appropriate to their responsibility for such Losses.
- 14.5 All warranties and undertakings under the Call-Off Contract are limited to those set out in the Call-Off Contract and any implied terms, conditions, undertakings or warranties whether arising through custom, statute or otherwise are excluded to the fullest extent permitted by the Law.

## **15 Insurance**

- 15.1 We have agreed to maintain the insurance policies to the amounts set out in the Order Form and in accordance with the Call-Off Terms. If you require any additional policies under clause 9.3, you must inform us of these requirements in writing before we enter into the Call-Off Contract, and we will set out such requirements in the Order Form.
- 15.2 Under clause 9.2.2, we will only include an "indemnity to principles" clause for your benefit if this is specifically agreed in the Order Form (as we will need to agree any such provision with our insurers on a case by case basis).
- 15.3 If you do have additional insurance requirements you should discuss these with us, however we are unable to guarantee that we will be able to take out any additional insurance that we did not agree in the Order Form, and you accept that failure to do so shall not be a Default under the Call-Off Terms.

## **16 Assignments and transfers**

- 16.1 Under Framework clause 21.4 you may assign, novate or otherwise dispose of your rights and obligations under the Call-Off Contract in certain circumstances. However, in order to enable us to comply with our regulatory requirements to ensure we know who we are providing services to (or are otherwise contracting with), you must inform us in advance of any proposed transfer and we may object to such transfer, acting reasonably, if such transfer would cause you or us to be in breach of Law, the requirements of our Regulatory Body, or cause a conflict of interest or our independence to be impaired.
- 16.2 KPMG Persons (who are not the KPMG contracting entity) may rely upon any rights or protections given them under the Call-Off Contract, and clause 27.1 shall be interpreted accordingly.

## **17 Exit Plan**

- 17.1 In accordance with clause 21 we will have supplied an exit plan for the migration away from the Services provided by us. The details of this exit plan may be further refined and agreed with you before the date of the Call-Off Contract or in accordance with any process set out in the Order Form.
- 17.2 Unless otherwise specifically agreed in the exit plan, we will provide the services and assistance set out in the exit plan, and in accordance with clause 22.1 will make any data (including Buyer Data and Buyer Personal Data) available to you, however you or your Replacement Supplier (or other third party

engaged by you for any migration services) will be responsible for your overall migration and exit strategy and migration to the Replacement Supplier.

- 17.3 Unless otherwise agreed with you in writing (including in the exit plan) we will charge you for any exit assistance we provide. We can agree these costs (or the charging basis) with you in the exit plan, and in the absence of these being agreed in advance can provide you with an estimate as and when such assistance is required.

## Part 2 – Additional Terms: Data and Analytic Services

### 1 Analytical Models

- 1.1 In these Supplier Terms, a “**Model**” means an analytical model that we agree to develop for you as part of the Services.
- 1.2 Our Services will be limited to the matters set out in the Order Form and the agreed specification for our data and analytics work. It will not include any confirmation or assessment of the commercial merits, technical feasibility or compliance with any applicable Law of the Model or the factual accuracy of the input data and the suitability, validity or completeness of the underlying assumptions or the way in which the requirements have been interpreted in arriving at assumptions and input data.
- 1.3 Where we agree to develop a Model for you, we will work with you to prepare an initial specification for the Model based on your objectives and requirements for the Model. This initial specification will describe the rules that will be applied to the Model, its key inputs and outputs, and set out the proposed sensitivities and scenarios. We will ask you to confirm your agreement to this specification before proceeding with the development of the Model.
- 1.4 We will as applicable discuss with you and agree potential amendments to the initial specification to address any issues identified in development and changes to the requirements of the Services and the Model which may be required. Additional effort on our part to implement changes beyond the initial specification may result in additional Charges. If this is the case, we will discuss this with you as soon as possible.

### 2 Assumptions

You acknowledge and accept that:

- (i) the Model assumes adequate internal and external data exist (and is generally obtainable) to develop the Model and provide the Services;
- (ii) the outputs from the Model are based on the agreed rules and no warranty is given under this Call-Off Contract in respect of the appropriateness, usefulness, completeness or timeliness of these outputs to the extent they depend on the agreed Model;
- (iii) the outputs from the Model depend on certain input data which you are responsible for and you acknowledge that we are not responsible for any output from the Model to the extent that output is dependent on your data or any third party data;
- (iv) the Model should not be used as a sole basis for making decisions and should be used in conjunction with other sources and your own knowledge and judgement; and
- (v) you will provide, or make available to us, data in a timely manner and in a single consistent data format via secure file transmission protocol or as otherwise agreed with you.

### 3 Data sources

- 3.1 We will agree with you any third party data sources to be used as part of the Services and for use in any Model, and whether you or us will procure that data. Where third party data is used, that third party's terms and conditions may apply to that data and its use, and you agree to comply with such terms as made available to you;
- 3.2 Where any third party data sources are withdrawn or changed by the relevant third party, we will agree with you whether a replacement third party data source is to be identified, and if so under what terms it will be obtained and who will be responsible for that activity.
- 3.3 We will agree with you whether any of your data will be analysed by us on our systems or on your systems. Where analysis of your data is to be carried out on our systems, we will agree with you how that data will be made available to us.
- 3.4 Where you are supplying data to us, we will conduct a data quality exercise to check that the quality of the data will support the planned analysis. However, we will not seek to test the completeness of the data provided to us and you agree and accept that the data is provided to us on an "as is" basis.
- 3.5 You acknowledge and agree that we are collecting, storing and processing the data on your behalf for the purposes of providing the Services to you. Unless specifically agreed with you in writing, you warrant that the data you provide or make available to us will not contain any personal data (as defined in the Data Protection Legislation).
- 3.6 Where we agree that the data you provide or make available to us includes personal data, you shall remain the data controller and you will be responsible for ensuring and warrant that all necessary steps required under the Data Protection Legislation have been taken by you to ensure that we can process such data on your behalf as part of the Services.

### 4 Your responsibilities

- 4.1 While we may in the course of performing the Services provide advice to you on matters relevant to a decision by you, responsibility for all your decisions, for any results or output arising from your decisions, and for management of any consequences shall rest solely with you. The Model is intended to operate as an advisory guide only, and you retain all responsibility for any decisions made with the assistance of the output from the Model. We will not perform any management functions or make any judgements or decisions for you as part of the Services.
- 4.2 You are responsible for:
  - (i) designating a management-level individual (or individuals) possessing suitable skill, knowledge and experience to be responsible at all times for overseeing the Services provided, evaluating the adequacy of the Services performed and any findings or recommendations, establishing and maintaining internal controls, and monitoring on-going activities;
  - (ii) specifying the requirements of the Model and how it is to be used by you, in connection with the internal project/purpose referenced in the Order Form ("**Project**");
  - (iii) the assumptions and input data to be used in developing and running the Model;
  - (iv) satisfying yourself that the Model has been constructed in such a way that its use will meet your objectives in all material respects;

- (v) performing necessary user acceptance testing when provided with drafts of the Model;
- (vi) the uses to which the Model and output data are put by you and decisions you may make with respect to the Project based on the use of the Model;
- (vii) any modifications to the Model after its release to you and any uses or decisions made following any such modifications; and
- (viii) maintenance of the Model after its delivery to you.

## 5 Completion of the Model

Where the Services include development of a Model and the Model is handed over to you for your use, the following provisions will apply:

- 5.1 Following completion of the development of the Model in accordance with the Model specification and your user acceptance testing of the Model, we will hand over the Model to you and issue a letter to you concerning the release of the Model. Unless we hear from you to the contrary in writing within 5 Working Days ("the **Transitional Period**") of your receipt of the Model, we will treat and accept your receipt of the Model as demonstration and evidence of your agreement that we have discharged our responsibilities in relation to the development of the Model and, in particular, that from the date of your receipt of the Model you will be solely responsible for the maintenance of the Model.
- 5.2 We acknowledge that paragraph 5.1 above will not affect your ability to raise any comments or concerns about aspects of our Services or the quality of the Model after receipt of the Model, but it will remove your ability to assert that we have not carried out the Model development tasks in accordance with the specification for the Model or that we have any responsibility for maintenance of the Model after its release to you.
- 5.3 If after the Transitional Period you have any additional requirements that were not in the scope of work originally agreed, we will be happy to discuss with you any further assistance that we may be able to provide and the terms and charges for such assistance.

## 6 Proof of Concepts

- 6.1 If the Services are to establish a proof of concept to demonstrate and assess the capabilities of our technologies in a defined or controlled manner (a "**PoC**"), or if a PoC is included as part of the Services, the PoC will be limited to the scope set out in the Order Form, or as otherwise agreed in writing, to allow us to determine if our technology solution meets your needs and what changes may be required to it.
- 6.2 Whilst we have worked with you to try and ensure that the scope of the PoC is broad enough to yield results and have agreed the success criteria, you acknowledge that the PoC may not meet the anticipated outcome. The PoC may reveal a need for additional technical development or for the engagement of additional Supplier Staff and/or user training before any wider deployment.

## 7 Collaboration tools

Where you require use of a collaboration site, such as for uploading data or other collaboration tools or data repository site, additional terms may apply. We will provide these to you at the relevant time and these terms will apply in addition to these Supplier Terms and will govern your use of the relevant collaboration site or tools.

## **8      Outputs and reports**

We will agree with you a suitable mechanism for sharing the output reports with you which may, without limitation, be by means of a shared network area, encrypted drive transfer, or secure file transfer protocol, or otherwise.